

# Written Submission on the Disability Services and other Legislation (NDIS) Amendment Bill

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Education, Employment and Small Business  
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## About Queenslanders with Disability Network (QDN)

QDN is an organisation of, for, and with people with disability and the organisation's motto is "nothing about us without us." QDN operates a state-wide network of members who provide information, feedback and views from a consumer perspective to inform systemic policy feedback to Government and peak bodies. QDN also provides information and referral support to people with disability.

QDN has over 2000 members and supporters across Queensland who provide QDN with the perspectives of people with disability.

## Introduction

QDN welcomes the opportunity to make a submission to the Disability Services and other Legislation (NDIS) Amendments Bill (the Bill). QDN understands the purpose of the Bill is to prepare for the full roll out of the National Disability Insurance Scheme (NDIS). QDN draws on member feedback and our previous recommendations made in 2016 and 2018 to the Review of the *Disability Services Act* to inform our response.

Through these law reforms, QDN believes it is important to also consider the many people with disability who will remain ineligible for the NDIS, yet still need services and supports from government. QDN also believes it is important to ensure this legislation aligns with the various human rights conventions and protocols to which Australia is a party, including the United Nations Convention on the Rights of Persons with Disability (CRPD). Also important in the Queensland context is the recently announced *Human Rights Act* for Queensland. QDN's response will focus on key areas of concern regarding restrictive practices, reportable deaths in care, worker screening, and the community visitor program.

QDN believes it is important to ensure that the rights and safety all people with disability receiving funded services related to their disability and functional needs, whether this is through NDIS or state funded services are protected by robust legislation. Given the recent Federal Government commitment to a Royal Commission into the abuse, neglect, violence and exploitation of people with disability, it is critical that amendments to the Queensland *Disability Services Act* and other relevant legislations continue to uphold safeguards and monitoring functions to protect all Queenslanders with disability who experience additional vulnerabilities. Legislative changes must deliver the scaffolding to ensure all people with disability are afforded the same protection of independent, autonomous observation and accountability of service practices regardless of where they live.

## Restrictive Practices

QDN supports the reduction and elimination of the use of restrictive practices. QDN also supports the principle that people with disability under restrictive practices have the same rights to choice and control in terms of engaging staff who support them and self-directing their supports. Further to this, QDN supports a nationally consistent approach to the implementation of restrictive practices. QDN acknowledges the decisions that have been made by Federal and State Governments places the current framework for the approval and use of restrictive practices at a state/territory level, however, QDN remains concerned that this approach allows a differing and inconsistent practices and standards to be in place which ultimately impact directly upon the lives of people with disability.

It is critical that amendments to the Act and other relevant legislation allow the new roles and responsibilities in place from 1 July 2019 to be enacted, but also flexibility that the legislation can operate effectively with the *Commonwealth NDIS (Restrictive Practices and Behaviour Support) Rules 2018* which are yet to be formally agreed to for operation in Queensland.

QDN asserts that this legislation needs to have a clear focus on the principles of the reduction and elimination of the use of restrictive practices in Queensland and needs to ensure its compliance with the *National Framework for the Reduction and Elimination of Restrictive Practices in the Disability Service Sector (the National Framework)* as referenced in Queensland's 2018 Review of the *Disability Services Act*. The National Framework focuses on the reduction of the use of restrictive practices in disability services that involve restraint (including physical, mechanical or chemical) or seclusion. It aims to contribute to the promotion and full realisation of all human rights for people with disability, including liberty and security of the person and freedom from exploitation, violence and abuse, in accordance with Articles 14 and 16 of the Convention on the Rights of Persons with Disability (CRPD). Restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety of the person or others<sup>1</sup>.

## Reportable Deaths in Care and Visitable Sites

QDN is concerned that the new definition of visitable sites and death in care are too narrow and will lead to unintended consequences with regards to the protection, monitoring and regulation of safeguards of vulnerable Queenslanders.

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<sup>1</sup> For more information see:

[https://www.dss.gov.au/sites/default/files/documents/04\\_2014/national\\_framework\\_restrictive\\_practices\\_0.pdf](https://www.dss.gov.au/sites/default/files/documents/04_2014/national_framework_restrictive_practices_0.pdf)

With regards to proposed changes to the Coroner's Act under Section 51, QDN believes this will narrow the scope and requirements to report a death in care. The function of Reportable Deaths in Care is to ensure the independent investigation of reportable deaths, with the objective of reducing the number of preventable deaths and promoting public health and safety.

People who live in residential care are for the most part highly vulnerable and have limited choices regarding their everyday care, the settings in which they reside and receive care and support. For these reasons QDN is challenged by the notion expressed in the briefing in the Bill that (under the previous legislation):

“Effectively the death of any person living in a residential service was a death in care. This is too broad and not consistent with the original definition of death in care which aimed to capture the most vulnerable persons with disabilities in receipt of very high levels of care and support”<sup>2</sup>.

With regards to this, QDN considers the narrowing of the definition of 'deaths in care' may lead to unintended consequences with regards to the protections and safeguards that need to be in place for all people with disability. QDN feels that bias about classifying the “most vulnerable persons” contributes to maintaining implied judgement about who is in and out, rather than a universal protection. QDN also considers the exclusion of deaths in private dwellings or aged care facilities as not appropriate and that these deaths need to be included in the scope of this legislation. QDN believes the definition for deaths in care needs to be expanded to include any person with disability, in a dwelling of any nature or in any residence, whether they are an NDIS participant or not, including dwellings in private homes, group homes, boarding houses or specialist disability accommodation.

The new definition includes the provision under Clause 51, that supports are delivered by a registered NDIS provider that is registered under the NDIS Act, section 73E to provide a relevant class of supports; and within a definition of NDIS participants/providers that is related to the classes of support received and/or offered by a provider.

QDN also raises potential challenges with the assumption that all supports to vulnerable individuals with disability will be delivered by registered NDIS providers. At this point in time, and as the scheme matures, there are a broad range of people with disability who have their supports self-managed by family members who may or may not be employing staff through registered NDIS providers. QDN believes it is critical that regardless of the nature of the

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<sup>2</sup> From the Briefing for the Education, Employment and Small Business Committee, Disability Services and Other Legislation (NDIS) Amendment Bill 2019, Department of Communities, Disability Services and Seniors, p. 11.

employment arrangements of staff working with people with disability, that people are protected and have safeguards in place.

QDN also raises concerns with regards to the use of a narrow definition of supports to apply to these Queensland definitions. There are 37 classes of support identified under the NDIS legislation, and these amendments propose using four as the *relevant class of supports* to provide rules around definitions impacting upon visitable sites and death in care. This includes

- (a) High intensity daily personal activities;
- (b) Assistance with daily life tasks in a group of shared living arrangement;
- (c) Specialist positive behaviour support that involves the use of a restrictive practice;
- (d) Specialist disability accommodation.

QDN is concerned that these amendments and the use of these definitions of the *relevant class of supports* may not cover all the people intended, and that potential issues may arise because of the lack of working operational definitions of these NDIS supports and the interpretations of the class of supports. This may lead to situations where people living in concrete care settings are receiving the same supports but they are classified differently under these 37 categories of support and therefore sit outside these four areas and one may or may not be considered under this legislation.

Additionally, given the current situation in Queensland where there are still a large number of people with disability who are being denied access to the NDIS, or are deemed ineligible, it is critical that this legislation continues to provide safeguards and protections for everyone under the reportable deaths in care and community visitor programs.

As the NDIS is implemented, it is critical that all levels of safeguards and protections are in place for all Queenslanders with disability, especially as the scheme and the market develops and matures. There are a number of practices and providers emerging which are delivering 'all of life' services that include the one provider delivering direct support, support co-ordination, plan management etc, which potentially pose significant conflicts of interests for individuals with disability, particularly those who may not have active formal and informal advocacy supports in their life. QDN believes that all emerging practices in this new market and service providers delivering support to individuals with disability need to have accountability and monitoring functions in place to protect and safeguard individual rights and life, and that the legislation should be broad enough to capture this.

QDN acknowledges that Queensland will have the Human Rights Act in place from 1 July 2019 and the NDIS Quality and Safeguards Commission to provide additional mechanisms to uphold the rights of people with disability, and it is critical that these amendments and other pieces of legislation work effectively together and do not disadvantage people previously

covered and make them excluded and no longer protected or safeguarded by legislative mechanisms.

## **Worker Screening**

QDN supports the continuation of the current safeguards for worker screening under the yellow and blue card systems. It is critical that people with disability have the opportunities for choice and control particularly in the workforce that is employed to support them and a diversity of options, however this needs to be balanced with protective and proactive actions. QDN supports the expansion of the exclusion of persons qualified to hold a yellow card as proposed.

## **Conclusion**

QDN believes that any amendments need to ensure that all people who need to be covered by the legislation are included and covered in the scope of definitions, and that people previously afforded these safeguards are not left without appropriate protections and safeguards.

QDN supports a broader definition of visitable sites and deaths in care, that includes all people receiving supports under the NDIS, and those Queenslanders with disability who may be ineligible for NDIS supports but still need to be afforded these legislative protections.

Queensland's transition to the NDIS is for 90,000 Queenslanders with disability, and this is based upon 50% new participants and 50% existing participants, however data shows that there are considerably lower than expected numbers of people who have transitioned into the scheme at this point in time. QDN believes it is critical, given the lower than expected numbers of Queensland NDIS participants in the scheme, that the legislative mechanisms in place are broad enough to afford everyone who has been covered, and should be covered access to the provisions provided under these legislative amendments, and supports any further consideration by Government to ensure that this Bill delivers the same level of safeguards for people with disability.

QDN thanks the Committee for the opportunity to make a submission regarding this consultation and looks forward to continuing to work with the Queensland Government to ensure that people with disability have access to the same protections and safeguards and their rights upheld.